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ACCOUNTING.

See NATIONAL BANKS.

ACTION.

For damages for seizure and detention, as act of war, of vessel owned by Spanish subjects not maintainable—Cessation of hostilities affecting rights—Relinquishment of claim by treaty of peace.

The seizure and detention by the military and naval forces of the United States during the war with Spain, of a vessel owned by Spanish subjects, was a seizure of enemy's property and an act of war within the limits of military operations, although the owners were not directly connected with military operations, and a claim for damages for such seizure and detention is not founded on the Constitution of the United States, or on any act of Congress, or regulation of an Executive Department, or on any contract express or implied, and an action based thereon is not sanctioned by the Tucker Act and cannot be maintained thereunder. The fact that the vessel was retained pending negotiations for a treaty of peace and during a cessation of hostilities does not connect the original seizure with an implied contract to compensate the owners for the detention of the vessel. If the owners had any claim against the United States it was relinquished by the stipulation in the treaty of peace relinquishing claims, such stipulation covering all claims arising prior to the exchange of ratifications of the treaty. *Hijo* v. *United States*, 315.

See ANTI-TRUST ACT;
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INDIAN TERRITORY, Curtis Act, 30 Stat. 495 (see Stare Decisis): *Morris* v. *Hitchcock*, 384.

INDICTMENT, sec. 1025, Rev. Stat. (see Criminal Law, 4): *Crowley* v. *United States*, 461.

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NAVAL RETIREMENTS, Rev. Stat. sec. 1444 (see Navy Personnel Act): *Gibson* v. *United States*, 182.

NAVY PERSONNEL ACT of March 3, 1899 (see Navy Personnel Act): *Ib.*

PORTO RICO, Act of April 12, 1900, sec. 35 (see Jurisdiction, A 7): *Hijo* v. *United States*, 315.

PORTO RICO, Foraker Act of April 12, 1900, 31 Stat. 77 (see Jurisdiction, A 5): *Crowley* v. *United States*, 461.

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POST OFFICE ACT of March 3, 1879 (see Postal Laws): *Houghton* v. *Payne*, 88; *Smith* v. *Payne*, 104.

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SHERMAN ACT of July 2, 1890 (see Interstate Commerce): *Field* v. *Barber Asphalt Paving Co.*, 618.

SUITS AGAINST GOVERNMENT, Tucker Act, March 3, 1889 (see Actio Jurisdiction, D 1): *Hijo* v. *United States*, 315.

TESTIMONY, Act of March 9, 1892, 27 Stat. 7, and secs. 861 and 914, Rev. Stat. (see Statutes, A 12): *Hanks Dental Assn.* v. *Tooth Crown Co.*, 303.

ACT OF WAR.

See ACTION.

ADMIRALTY.

Injury to seamen—Duty of master.

While a master is not bound in every instance where a seaman is seriously injured to disregard every other consideration, and put into the nearest port where medical assistance can be obtained, his duty to do so is manifest, if the accident happens within a reasonable distance of such a port. The duty of the master in each case depends upon its own circumstances, and although the case may not be free from doubt this court will apply its general rule both in equity and admiralty cases, not to reverse the concurring decisions of two subordinate courts upon questions of fact unless there be a clear preponderance of evidence against their conclusion. *The Iroquois*, 240.

ALASKA.

See CONSTITUTIONAL LAW, 24.

ALIENS.

See CONGRESS, POWERS OF, 1;
CONSTITUTIONAL LAW, 9;
JURISDICTION, A 4.

ALIEN IMMIGRANT LAW.

Power of Congress to require proof of citizenship—Procedure necessary to establish right of entry.

It is one of the necessities of the administration of justice that all questions —even though fundamental—should be determined in an orderly way, and it is within the power of Congress to require one asserting the right to enter this country on the ground that he is a citizen, to establish his citizenship in some reasonable way. A mere allegation of citizenship by a person of Chinese descent is not sufficient to oust the inspector of jurisdiction under the alien immigrant law and allow a resort to the courts without taking the appeal to the Secretary provided for in the act, and unless such appeal has been taken and decided a writ of *habeas corpus* will be denied. *United States* v. *Sing Tuck*, 161.

See CONSTITUTIONAL LAW, 9.

ALLOTMENT.

See INDIANS.

AMOUNT IN CONTROVERSY.

See JURISDICTION, A 1; C 5

ANARCHISTS.

See CONSTITUTIONAL LAW, 9;
JURISDICTION, A 4.

ANTI-TRUST ACT.

Limitation of direct proceedings in equity.

The intention of the Anti-Trust Act of July 2, 1890, 26 Stat. 209, was to limit direct proceedings in equity to prevent and restrain such violations of the Anti-Trust Act as cause injury to the general public, or to all alike, merely from the suppression of competition in trade and commerce among the several States and with foreign nations, to those instituted in the name of the United States, under § 4 of the act, by District Attorneys of the United States, acting under the direction of the Attorney General; thus securing the enforcement of the act, so far as such direct proceedings in equity are concerned, according to some uniform plan, operative throughout the entire country. A State cannot maintain an action in equity to restrain a corporation from violating the provisions of the act of July 2, 1890, on the ground that such violations by decreasing competition would depreciate the value of its public lands and enhance the cost of maintaining its public institutions, the damages resulting from such violations being remote and indirect and not such direct actual injury as is provided for in § 7 of the act. *Minnesota* v. *Northern Securities Co.*, 48.

APPEAL AND WRIT OF ERROR.

See JURISDICTION; STATUTES, A 8, 13;
FEDERAL QUESTION; WRIT AND PROCESS.

AUTOMATIC COUPLERS.

See INSTRUCTIONS TO JURY, 2.

BANKS.

See NATIONAL BANKS.

BANKRUPTCY.

Title of trustee in bankruptcy that of bankrupt.

A trustee in bankruptcy gets no better title than that which the bankrupt had and is not a subsequent purchaser, in good faith, within the meaning of § 112 of chapter 418, of the laws of 1897 of New York. And as the vendor's title under a conditional sale is good against the bankrupt it is good also against the trustee. *Hewit* v. *Berlin Machine Works*, 296.

See JURISDICTION, B 2;
STATUTES, A 2.

BANKRUPTCY ACT.

See WITNESS, 2.

BELLIGERENTS.

See ACTION.

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CARRIERS.

See COMMON CARRIER; NEGLIGENCE; INSTRUCTIONS TO JURY; RAILROADS; STREET RAILWAYS.

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Cleveland v. *Cleveland City Ry. Co.*, 194 U. S. 517, followed in *Cleveland* v. *Cleveland Electric Ry. Co.*, 538.

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Gibson v. *United States*, 194 U. S. 182, followed in *Lowe* v. *United States*, 193.

Holy Trinity Church v. *United States*, 143 U. S. 457, 464, followed in *Binns* v. *United States*, 486.

Houghton v. *Payne*, 194 U. S. 88, followed in *Smith* v. *Payne*, 104, and *Bates & Guild Co.* v. *Payne*, 106.

Insurance Company v. *Cushman*, 108 U. S. 51, followed in *Hooker* v. *Burr*, 415.

Jones v. *Montague*, 194 U. S. 147, followed in *Selden* v. *Montague*, 153.

Mills v. *Green*, 159 U. S. 654, followed in *Jones* v. *Montague*, 147.

Stephens v. *Cherokee Nation*, 174 U. S. 45, followed in *Morris* v. *Hitchcock*, 384.

CITIZENSHIP.

See ALIEN IMMIGRANT LAW; CONSTITUTIONAL LAW, 23; CONGRESS, POWERS OF, 4; JURISDICTION, A 3; C 3; PLEADING.

CHINESE.

See ALIEN IMMIGRANT LAW.

CLAIMS AGAINST GOVERNMENT.
See ACTION.

COAL RATES.
See INTERSTATE COMMERCE COMMISSION.

COMBINATION.
See CORPORATIONS.

COMMERCE.
See INTERSTATE COMMERCE.

COMMON CARRIERS.
Limitation of liability.
While primarily the responsibility of a common carrier is that expressed by the common law and the shipper may insist upon such responsibility, he may consent to a limitation of it, and so long as there is no stipulation for an exemption which is not just and reasonable in the eye of the law the responsibility may be modified by contract. It is not necessary that an alternative contract be presented to the shipper for his choice. A bill of lading is a contract and knowledge of its contents by the shipper will be presumed and a provision therein against liability for damages by fire is not unjust or unreasonable. It is not necessary that there be an independent consideration apart from that expressed in the bill of lading to support a reasonable stipulation of exemption from liability. While the burden may be on the carrier to show that the damage resulted from the excepted cause, after that has been shown the burden is on the plaintiff to show that it occurred by the carrier's own negligence from which it could not be exempted. *Cau* v. *Texas & Pacific Ry. Co.*, 427.

See INSTRUCTIONS TO JURY; NEGLIGENCE; RAILROADS; STREET RAILWAYS.

COMMON LAW.
See CONSTITUTIONAL LAW, 8.

COMPETITION.
See ANTI-TRUST ACT.

CONDITIONAL SALES.
See BANKRUPTCY.

CONFLICT OF LAWS.
See JURISDICTION, C 1; STATUTES, A 3.

CONGRESS, POWERS OF.
1. *Immigration, regulation of.*
Congress has power to exclude aliens from, and to prescribe the conditions

on which they may enter, the United States; to establish regulations for deporting aliens who have illegally entered, and to commit the enforcements of such conditions and regulations to executive officers. Deporting, pursuant to law, an alien who has illegally entered the United States, does not deprive him of his liberty without due process of law. *Turner* v. *Williams*, 279.

2. *Regulation of postal system.*

The power vested in Congress to establish post offices and post roads embraces the regulation of the entire postal system of the country; Congress may designate what may be carried in, and what excluded from, the mails; and the exclusion of articles equally prohibited to all does not deny to the owners thereof any of their constitutional rights. *Public Clearing House* v. *Coyne*, 497.

3. *Territorial control—Establishment of government and revenue system applicable solely to Territory for which established.*

While it may not be within the power of Congress by a special system of license taxes to obtain, from a Territory of the United States, revenue for the benefit of the Nation as distinguished from that necessary for the support of the territorial government, Congress has plenary power save as controlled by the provisions of the Constitution, to establish a government of the Territories which need not necessarily be the same in all Territories and it may establish a revenue system applicable solely to the Territory for which it is established. *Binns* v. *United States*, 486.

4. *To require proof of right of entry to this country on ground of citizenship.*

It is one of the necessities of the administration of justice that all questions—even though fundamental—should be determined in an orderly way, and it is within the power of Congress to require one asserting the right to enter this country on the ground that he is a citizen, to establish his citizenship in some reasonable way. *United States* v. *Sing Tuck*, 161.

See CONSTITUTIONAL LAW, 24.

CONGRESS, ACTS OF.

See ACTS OF CONGRESS;
STATUTES, A.

CONSIDERATION.

See CONTRACTS.

CONSTITUTIONAL LAW.

1. *Act of Chickasaw Nation governing introduction of live stock, valid.*

The act of the Chickasaw Nation, approved by the Governor May 5, 1902, and by the President of the United States May 15, 1902, prescribing privilege or permit taxes, and the regulations of the Secretary of the Interior of June 3, 1902, governing the introduction by non-citizens of live stock in the Chickasaw Nation are valid, and not an exercise of arbitrary power, and they do not in any respect violate the Constitution of the United States. *Morris* v. *Hitchcock*, 384.

2. *Amendments—First eight articles refer to powers of Federal government and not those of the States.*

The first eight articles of the amendments to the Constitution of the United States have reference to powers exercised by the government of the United States, and not to those of the States. *Lloyd* v. *Dollison*, 445.

3. *Contract within impairment clause—Void ordinance attempting to grant franchise to other than one entitled.*

Under the act of California of March 11, 1901, a street railway franchise can only be granted in case of failure of the successful bidder to comply with the provisions of the act as to payment within the prescribed period to the next highest bidder at the original competitive opening of bids, and an ordinance attempting to grant the franchise to another is void and the grantee acquires no rights thereunder, nor is such an ordinance a contract within the meaning of the impairment of contract clause of the Federal Constitution. *Pacific Electric Ry. Co.* v. *Los Angeles*, 112.

4. *Contracts—Impairment of contract made with one of several merged corporations—Divisional relief.*

Where the contract claimed to have been impaired was made with one of several corporations merged into the complainant, and concededly affects only the property and franchises originally belonging to such constituent company, divisional relief cannot be granted affecting only such property when the bill is not framed in that aspect but prays for a suspension of the impairing ordinance as to all of complainant's property. The rule, that a special statutory exemption does not pass to a new corporation succeeding others by consolidation or purchase in the absence of express direction to that effect in the statute, is applicable where the constituent companies are held and operated by one of them, under authority of the Legislature. Even if the asserted exemption from change of rates existed and had not been lost by consolidation, the bill cannot be sustained where no such contract rights as alleged have been impaired or destroyed by the ordinance. *Peoples' Gas Light Co.* v. *Chicago*, 1.

5. *Contracts—Impairment—Effect upon contract of purchase at foreclosure sale of laws passed prior to sale.*

An independent purchaser at a foreclosure sale, who has no other connection with the mortgage, cannot question the validity of legislation existing at the time of his purchase on the ground that it impaired a contract, even though the law complained of was passed after the execution of the mortgage which was foreclosed (*Insurance Co.* v. *Cushman*, 108 U. S. 51, followed, and *Barnitz* v. *Beverly*, 163 U. S. 118, distinguished). Whether the requirements of a statute affecting foreclosure sales and redemption, and which does not conflict with the Federal Constitution have been complied with, is not a Federal question. *Hooker* v. *Burr*, 415.

6. *Contracts—Impairment—Ordinance of city of Cleveland reducing street railway fares invalid.*

In this case it was held that the consolidation ordinance of February, 1885,

of the city of Cleveland, and ordinances thereafter passed by the municipality and accepted by the companies constituted such binding contracts in respect to the rate of fare to be exacted upon the consolidated and extended lines of the railway companies as to deprive the city of its right to exercise the reservations in the original ordinances as to changing the rates of fare; and the ordinance of October 17, 1898, reducing the rate of fare to be charged was void and unconstitutional within the impairment clause of the Constitution of the United States. *Cleveland* v. *Cleveland Railway Companies*, 517, 538.

7. *Due process of law—Reading of deposition of absent witness on criminal trial in state court.*

The reading in accordance with the law of the State on a criminal trial in a state court, of a deposition taken before the committing magistrate, in the presence of the accused, of a witness who had been cross-examined by the counsel for accused and who was permanently absent from the State, does not deprive the accused of his liberty without due process of law, and is not violative of any provision in the Federal Constitution or any of the Amendments thereto. *West* v. *Louisiana*, 258.

8. *Due process of law—Alteration of common law by State—Error as to common law.*

As to matters within its exclusive jurisdiction a State has the right to alter the common law at any time, although it had theretofore adopted it with certain limitations, and if through its courts it errs in deciding what the common law is, yet if no fundamental right is denied, to an accused, and no specific provision of the constitution is violated, he is not denied due process of law within the meaning of the Federal Constitution. *Ib.*

9. *Due process of law—Deportation of aliens—Exclusion of anarchists.*

Deporting, pursuant to law, an alien who has illegally entered the United States, does not deprive him of his liberty without due process of law. The Alien Immigration Act of March, 1903, 32 Stat. 1213, does not violate the Federal Constitution, nor are its provisions as to the exclusion of aliens who are anarchists, unconstitutional. *Turner* v. *Williams*, 279.

10. *Due process of law—Deprivation of property—Assessment for public improvement.*

Where a public improvement is completed, and the assessment made at the instance and on the petition of the owners of the property, and pursuant, in form at least, to an act of the legislature of the State, and in strict compliance with its provisions, and with the petition there is an implied contract that the parties, at whose request and for whose benefit the work was done, will pay for it in the manner provided for by the act, and after completion of the work they cannot set up the unconstitutionality of the act to avoid the assessment. An assessment made under such circumstances does not deprive the owners of their property without due process of law nor take their property without just compensation. *Shepard* v. *Barron*, 553.

11. *Due process of law—Penalty left to discretion of court.*

It is not necessarily a deprivation of liberty or property without due process of law to commit to the judgment of a court the amount of punishment for illegal liquor selling. *Lloyd* v. *Dollison*, 445.

12. *Due process of law—Postal fraud order—Disposition of property affected by—Seizure of mail matter.*

Due process of law does not necessarily require the interference of judicial power nor is it necessarily denied because the disposition of property is affected by the order of an executive department. Each executive department of the Government has certain public functions and duties the performance of which is absolutely necessary to the existence of the Government and although it may temporarily operate with seeming harshness upon individuals, the rights of the public must, in these particulars, overrule the rights of individuals provided there be reserved to them an ultimate recourse to the judiciary. Where a person is engaged in an enterprise which justifies the Postmaster General in issuing a fraud order, it is not too much to assume that *prima facie* at least all of his letters are identified with the business and § 3929, Rev. Stat., as amended by the act of September 19, 1890, is not unconstitutional because the Postmaster General in seizing and detaining all letters under a fraud order may include some having no connection whatever with the prohibited enterprise. The rights of the sender, and the addressees of letters returned to the sender under a fraud order issued by the Postmaster General are not affected by the order except so far as the same is a refusal on the part of Congress to extend the facilities of the Post Office Department to the final delivery of the letter, and § 3929, Rev. Stat., as amended, is not unconstitutional and does not operate as a confiscation of the property of the person against whom the order is issued. The misrepresentation of existing facts is not always necessarily involved in a scheme or artifice to defraud and where, after examination made, the Postmaster General has issued a fraud order on the ground that the defendants were engaged in a scheme for obtaining money or property by means of false representations, and the master in the court below has found that the scheme was, in effect, a lottery, the significant fact is that the parties were engaged in a scheme within the meaning and prohibition of §§ 3929 and 4101, Rev. Stat., and this court will not hold that the Postmaster General exceeded his authority in making the fraud order. *Public Clearing House* v. *Coyne*, 497.

13. *Equal protection of laws—Discrimination against railroad companies by Texas Johnson Grass Act.*

The law of Texas, chap. 117, of 1901, directed solely against railroad companies and imposing a penalty for permitting Johnson grass or Russian thistle to go to seed upon their right of way, is not shown so clearly to deny the companies equal protection of the laws as to be held contrary to the Fourteenth Amendment. *Missouri, Kansas & Texas Ry. Co.* v. *May*, 267.

14. *Equal protection of laws—Privilege given by State to resident but not to non-resident owners of property.*

It is not the purpose of the Fourteenth Amendment to prevent the States from classifying the subjects of legislation and making different regulations as to the property of different individuals differently situated. The provision of the Federal Constitution is satisfied if all persons similarly situated are treated alike in privileges conferred or liabilities imposed. The provision in § 5989, Rev. Stat. of Missouri, that certain improvements are not to be made if a majority of resident owners of property liable to taxation protest, is not unconstitutional because it gives the privilege of protesting to them and not to non-resident owners. *Field* v. *Barber Asphalt Paving Co.*, 618.

15. *Equal protection of laws—Due process—Municipal regulation subject to exceptions.*

It is within the power of a municipality when authorized by the law of the State, to make a general police regulation subject to exceptions, and to delegate the discretion of granting the exceptions to a municipal board or officer and the fact that some may be favored and some not, does not, if the ordinance is otherwise constitutional, deny those who are not favored the equal protection of the law. The ordinance of the city of St. Louis, prohibiting the erection of any dairy or cow stable within the city limits without permission from the municipal assembly and providing for permission to be given by such assembly, is a police regulation, and is not unconstitutional as depriving one violating the ordinance of his property without due process of law, or denying him the equal protection of the laws. Whether such an ordinance is violated is not a Federal question, and this court is bound by the decision of the state court in that respect. *Fisher* v. *St. Louis*, 361; *Schefe* v. *St. Louis*, 373.

16. *Equal protection of laws—Due process—Validity of Ohio local option law.*

The power of the State over the liquor traffic is such that the traffic may be absolutely prohibited, and that being so it may be prohibited conditionally and a local option law does not necessarily deny to any person equal protection of the laws because the sale of liquor is by the operation of such a law a crime in certain territory and not in other territory. The Ohio local option law regulating the sale of liquor is not unconstitutional as depriving one attempting to sell liquor in that part of the State in which such sale is prohibited of his liberty or property without due process of law or denying him the equal protection of the laws. *Lloyd* v. *Dollison*, 445.

17. *Full faith and credit clause—Extent of application.*

Article IV of the Constitution of the United States only prescribes a rule by which courts, Federal and State, are to be guided when a question arises in the progress of a pending suit as to the faith and credit to be given by the court to the public acts, records, and judicial proceedings of a State, other than that in which the court is sitting. It has nothing to

do with the conduct of individuals or corporations. *Minnesota* v. *Northern Securities Co.*, 48.

18. *Indictment and place of trial.*

The Fifth Amendment is satisfied by one inquiry and adjudication, and an indictment found by the proper grand jury should be accepted anywhere within the United States as at least *prima facie* evidence of probable cause and sufficient basis for removal from the district where the person arrested is found to the district where the indictment was found. The place where such inquiry must be had, and the decision of the grand jury obtained, is the locality in which by the Constitution and laws the final trial must be had. *Beavers* v. *Henkel*, 73.

19. *Judicial power—Action against State to set aside tax sale not maintainable in Federal court.*

An action cannot be maintained in the Federal courts to set aside tax sales on the ground that the sales are void, where the property has been brought, and is claimed, by the State without making the State a party, and where there is no statutory provision permitting such an action it cannot be maintained against the State under the Eleventh Amendment. *Chandler* v. *Dix*, 590.

20. *Power of Congress to establish post offices and post roads—Exclusion from mails.*

The power vested in Congress to establish post offices and post roads embraces the regulation of the entire postal system of the country; Congress may designate what may be carried in, and what excluded from, the mails; and the exclusion or articles equally prohibited to all does not deny to the owners thereof any of their constitutional rights. *Public Clearing House* v. *Coyne*, 497.

21. *Searches and seizures—Self incriminating evidence.*

Where coal companies which had organized a competing line to tidewater made contracts with railroad companies for the purchase of the collieries by the railroad companies, which resulted in the abandonment of the proposed competing line, the contracts are relevant evidence bearing upon the manner in which rates were fixed. Compelling the production of such contracts and the giving of testimony relative to the manner in which the business is done, does not deprive the witnesses of any rights under the Fourth and Fifth Amendments to the Constitution of the United States. *Interstate Commerce Commission* v. *Baird*, 25.

22. *Sixth Amendment not applicable to proceedings in state courts.*

The Sixth Amendment does not apply to proceedings in a state court, nor is there any specific provision in the Federal Constitution requiring defendant to be confronted with the witnesses against him in a criminal trial in the state courts. *West* v. *Louisiana*, 258.

23. *States—Citizenship of, in Federal courts.*

A State is not a citizen within the meaning of the provisions of the Con-

stitution or acts of Congress regulating the jurisdiction of the Federal courts. *Minnesota* v. *Northern Securities Co.*, 48.

24. *Taxation—Powers of Congress to establish governments and revenue systems for Territories—Validity of provision of Alaska Penal Code relative to license taxes.*

While it may not be within the power of Congress by a special system of license taxes to obtain, from a Territory of the United States, revenue for the benefit of the Nation as distinguished from that necessary for the support of the territorial government, Congress has plenary power save as controlled by the provisions of the Constitution, to establish a government of the Territories which need not necessarily be the same in all Territories and it may establish a revenue system applicable solely to the Territory for which it is established. The fact that the taxes are paid directly into the treasury of the United States and are not specifically appropriated for the expenses of the Territory, when the sum total of all the revenue from the Territory including all the taxes does not equal the cost and expense of maintaining the government of the Territory, does not make the taxes unconstitutional if it satisfactorily appear that the purpose of the taxes is to raise revenue in that Territory for the Territory itself. The license taxes provided for in § 460, Title II, of the Alaska Penal Code, are not in conflict with the uniformity provisions of § 8 of Article I of the Constitution of the United States. *Binns* v. *United States*, 486.

See CONGRESS, POWERS OF; INTERSTATE COMMERCE; INTERSTATE COMMERCE COMMISSION; JURISDICTION, C 8; STARE DECISIS.

CONSTRUCTION OF STATUTES.

See ALIEN-IMMIGRANT LAW; ANTI-TRUST ACT; FEDERAL QUESTION; WITNESS, 2. INDIANS; POSTAL LAWS; STATUTES, A;

CONTEMPT OF COURT.

Nature and object of contempt proceedings—Jurisdiction of Circuit Court of Appeals to review.

A contempt proceeding is *sui generis*, in its nature criminal, yet may be resorted to in civil as well as criminal actions and also independently of any action. The purpose of contempt proceedings is to uphold the power of the court, and also to secure suitors therein the rights by it awarded. The power to punish for contempt is inherent in all courts. Under § 6 of the Court of Appeals Act of 1891, a Circuit Court of Appeals has jurisdiction to review a judgment of the District or Circuit Court finding a person guilty of contempt for violation of its order and imposing a fine for the contempt. If the person adjudged in contempt and fined therefor is not a party to the suit in which the order is made

he can bring the matter to the Circuit Court of Appeal by writ of error but not by appeal. *Bessette* v. *W. B. Conkey Co.*, 324.

See JURISDICTION, B 1.

CONTRACTS.

Bill of lading a contract—Presumption of knowledge of contents—Consideration for stipulation of exemption from liability.

A bill of lading is a contract and knowledge of its contents by the shipper will be presumed, and a provision therein against liability for damages by fire is not unjust or unreasonable. It is not necessary that there be an independent consideration apart from that expressed in the bill of lading to support a reasonable stipulation of exemption from liability. *Cau* v. *Texas & Pacific Ry. Co.*, 427.

See ACTION; CONSTITUTIONAL LAW, 3, 4, 5, 6, 10; INJUNCTION; INTERSTATE COMMERCE; JURISDICTION, C 6, 8.

CONVEYANCE.

See NATIONAL BANKS.

CORPORATIONS.

Consolidation affecting rights of constituent corporation.

Corporations having consolidated under a state statute providing that on the recording of the agreement the separate existence of the constituent corporations should cease and become a single corporation subject to the provisions of that law, and other laws relating to such a corporation, and should be vested with all the property, business, credits, assets and effects of the constituent companies, and one of the corporations claimed to possess an exclusive franchise to furnish water to a city under which the city could not for a period erect its own works, and the constitution and laws of the State at the time of the consolidation, but passed after the franchise was granted, prohibited the granting of such exclusive privileges. *Held* that on the consolidation the original corporations disappeared and the franchises of the consolidated corporation were left to be determined by the general law and as it existed at the time of the consolidation and the corporation did not succeed to the right of the original company to exclude the city from erecting its own plant. *Shaw* v. *City of Covington*, 593.

See CONSTITUTIONAL LAW, 4; NATIONAL BANKS; PLEADING; PUBLIC WORKS.

COURTS.

1. *Action to set aside tax sale under state law not maintainable in Federal courts.*

A state statute providing for the procedure in, and naming the officials who are necessary parties to, actions to set aside tax, sales the language whereof clearly indicates that the legislature contemplated that such actions should only be brought in the courts of the State, will not be construed as

permitting such actions to be brought in the Federal courts. *Chandler* v. *Dix*, 590.

2. *Circuit—Abuse of discretion justifying reversal.*

It is exceedingly disputable whether it is an abuse of discretion justifying reversal by this court, for the Circuit Court to deny a motion to file an amended bill after judgment entered. *Brown* v. *Schleier*, 18.

See ALIEN IMMIGRANT LAW;
CONSTITUTIONAL LAW, 17, 19;
CONTEMPT OF COURT;
EQUITY;
EXECUTIVE OFFICERS;
FEDERAL QUESTION;
INSTRUCTIONS TO JURY;
INTERSTATE COMMERCE COMMISSION;
JURISDICTION;
MINING CLAIMS, 2;
PRACTICE;
REMOVAL OF CAUSES.

COURT AND JURY.

Question for jury where evidence of substantial character bearing upon general issue.

Where there is evidence of a substantial character bearing upon the general issue, the question is for the jury even though the court may think there is a preponderance of evidence for the party moving for a direction. *City & Suburban Railway* v. *Svedborg*, 201.

CRIMINAL LAW.

1. *Indictment—One sufficient under Constitution—Prima facie evidence of probable cause.*

One inquiry and adjudication is sufficient under the Fifth Amendment and an indictment found by the proper grand jury should be accepted anywhere within the United States as at least *prima facie* evidence of probable cause and sufficient basis for removal from the district where the person arrested is found to the district where the indictment was found. *Beavers* v. *Henkel*, 73.

2. *Trial—Place of indictment the place of trial.*

The place of indictment is the locality in which by the Constitution and laws the final trial must be had. *Ib.*

3. *Sentence—Term of imprisonment; detention in jail pending final adjudication not part of—Different counts in indictment affecting validity of sentence.*

A sentence at hard labor in the state prison does not commence until the person sentenced is taken to the prison, and if by his own efforts to obtain a review and reversal of the judgment he secures a *supersedeas* pending appeal, his detention meanwhile in the county jail cannot be counted as a part of the time of imprisonment in the state prison. Although for some purposes different counts in an indictment may be regarded as in effect separate indictments, where there is nothing to show that the court was without jurisdiction to impose a sentence of two years for the crime of which the defendant was convicted, this

court will not presume that the sentence was for not exceeding one year on each of the two counts on which he was convicted, thus making the sentences in the state prison at hard labor illegal under Rev. Stat. §§ 5541, 5546, 5547. *Dimmick* v. *Tompkins*, 540.

4. *Grand juror—Disqualification prescribed by statute a matter of substance.* The disqualification of a grand juror prescribed by statute is a matter of substance which cannot be regarded as a mere defect or imperfection within the meaning of § 1025, Rev. Stat. *Crowley* v. *United States*, 461.

See CONSTITUTIONAL LAW, 7, 18, 22; CONTEMPT OF COURT; EXTRADITION; JURISDICTION, D 2; LOCAL LAW (P. R.); STATUTES, A 6; WRIT AND PROCESS.

CROSS-BILL.

See JURISDICTION, C 5.

CURTIS ACT.

See STARE DECISIS.

CUSTOM.

See STATUTES, A 4.

DAMAGES.

See ACTION; COMMON CARRIER; EVIDENCE; JURISDICTION, C 1.

DECEDENTS.

See MINING CLAIMS, 4.

DEFENCES.

See CONSTITUTIONAL LAW, 10; REMOVAL OF CAUSES, 2.

DELEGATION OF POWERS.

See CONGRESS, POWERS OF, 1.

DEPORTATION.

See CONGRESS, POWERS OF, 1; CONSTITUTIONAL LAW, 9; JURISDICTION, A 4.

DEPOSITIONS.

See CONSTITUTIONAL LAW, 7, 22; JURISDICTION, C 10; STATUTES, A 12.

DISTRICT OF COLUMBIA.

See CONSTITUTIONAL LAW, 1 (*Morris* v. *Hitchcock*, 384);
COURT AND JURY (*City & Suburban Railway* v. *Svedborg*, 201);
EXECUTIVE OFFICERS (*Bates & Guild Co.* v. *Payne*, 106);
INSTRUCTIONS TO JURY (*City & Suburban Railway* v. *Svedborg*, 201);
JURISDICTION, A 1 (*Holzendorf* v. *Hay*, 373);
POSTAL LAWS (*Smith* v. *Payne*, 104; *Houghton* v. *Payne*, 88).
STARE DECISIS (*Morris* v. *Hitchcock*, 384).

DIVERSE CITIZENSHIP.

See JURISDICTION, A 3; C 3.

DUE PROCESS OF LAW.

See CONSTITUTIONAL LAW, 7, 8, 9, 10, 11, 12, 15.

EJECTMENT.

See JURISDICTION, C 7.

EQUAL PROTECTION OF LAWS.

See CONSTITUTIONAL LAW, 13, 14, 15, 16.

EQUITY.

Jurisdiction of court of equity to enjoin enforcement of municipal ordinance reducing street railway fares—Multiplicity of suits.

In view of the continuous confusion, risks and multiplicity of suits, which would result from, and the public interests and vast number of people which would be affected by, the enforcement of an ordinance reducing the rates of fare of street railways, which ordinance the companies claim is unconstitutional as impairing the obligation of the contracts resulting from the ordinances granting the franchises, a court of equity has jurisdiction of an action to enjoin the enforcement of the ordinance, especially when the ordinance affects only a part of the system and would engender the enforcement of two rates of fare over the same line leading to dangerous consequences. *Cleveland* v. *Cleveland Railway Companies*, 517, 538.

See ANTI-TRUST ACT;
INJUNCTION;
MINING CLAIMS, 2.

ESTOPPEL.

Agreement by property owners as to legality of assessment affecting right to assert unconstitutionality of law under which made.

An agreement that work for which their property is assessed was legally done and that the improvement was legally constructed, executed by property owners for the purpose of obtaining a market for the sale of bonds by the municipality to enable it to make the improvement, in effect provides that the lien of the assessment to pay the bonds is valid, and they are estopped from asserting the unconstitutionality of the law under which the assessment is made. *Shepard* v. *Barron*, 553.

EVIDENCE.

1. *Expert testimony in proof of foreign statute.*

Where foreign statutes are the basis of a claim for damages in an action in the Circuit Court of the United States parol evidence of a properly qualified expert is admissible as to the construction of such statutes upon any matter open to reasonable doubt, notwithstanding certified copies of such statutes and agreed translations thereof are already in evidence. *Slater* v. *Mexican National R. R. Co.*, 120.

2. *Relevancy; upon what dependent.*

Relevancy of evidence does not depend upon the conclusiveness of the testimony offered, but upon its legitimate tendency to establish a controverted fact. *Interstate Commerce Commission* v. *Baird*, 25.

See COMMON CARRIER;
CONSTITUTIONAL LAW, 7, 21, 22;
CRIMINAL LAW, 1;
EXTRADITION;
FEDERAL QUESTION, 2;
INTERSTATE COMMERCE COMMISSION;
JURISDICTION, C 10;
PRACTICE, 2;
STATUTES, A 12;
WITNESS.

EXECUTIVE DEPARTMENTS.

Necessary functions overruling rights of individuals.

Each executive department of the Government has certain public functions and duties the performance of which is absolutely necessary to the existence of the Government and although it may temporarily operate with seeming harshness upon individuals, the rights of the public must, in these particulars, overrule the rights of individuals provided there be reserved to them an ultimate recourse to the judiciary. *Public Clearing House* v. *Coyne*, 497.

EXECUTIVE OFFICERS.

Decision of questions of fact and law by—Power of courts to review.

Where the decision of questions of fact is committed by Congress to the judgment and discretion of the head of a department, his decision thereon is conclusive; and even upon mixed questions of law and fact, or of law alone, his action will carry with it a strong presumption of its correctness, and the courts will not ordinarily review it, although they have the power, and will occasionally exercise the right of so doing. *Bates & Guild Co.* v. *Payne*, 106.

See CONSTITUTIONAL LAW, 12;
INJUNCTION;
POSTAL LAWS.

EXEMPTIONS.

See CONSTITUTIONAL LAW, 4;
TAXATION.

EXPERT TESTIMONY.

See EVIDENCE, 1.

EXTRADITION.

1. *Nature of offense—Requisite degree of criminality.*

Where an extradition treaty provides that the surrender shall only be made "upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offense had there been committed," one whose surrender is demanded from this Government and who is arrested in one of the States cannot be delivered up except upon such evidence of criminality as under the laws of that State would justify his apprehension and commitment for trial if the crime had there been committed. *Pettit* v. *Walshe*, 205.

2. *Power of United States commissioner to issue warrant for arrest to be executed in State other than where office located.*

A United States commissioner appointed to execute the extradition laws has no power to issue a warrant on a requisition made under existing treaties with Great Britain, under which a marshal of a district in another State can arrest the accused and deliver him in another State before the commissioner issuing the warrant, without a previous examination being had before some judge or magistrate authorized by the acts of Congress to act in extradition matters, and sitting in the State where he is found and arrested. *Ib.*

FEDERAL QUESTION.

1. *Compliance with requirements of statute not in conflict with Federal Constitution.*

Whether the requirements of a statute affecting foreclosure sales and redemption, and which does not conflict with the Federal Constitution, have been complied with, is not a Federal question. *Hooker* v. *Burr*, 415.

2. *Construction of state statutes, etc., relative to reading depositions in criminal trials.*

The construction of the state constitution and statutes and the common law on the subject of reading depositions of witnesses in criminal trials is not a Federal question and this court is bound in such cases by the construction given thereto by the state court. *West* v. *Louisiana*, 258.

See CONSTITUTIONAL LAW, 5, 15;
JURISDICTION;
REMOVAL OF CAUSES, 1.

FELLOW SERVANTS.

Telegraph operator, giving information on call of train dispatcher, a fellow servant of train operatives.

A local telegraph operator called upon specially by a train dispatcher to give information relative to the arrival of a train at his station, to enable the dispatcher to formulate orders for the movement of other trains, acts in the matter of giving such information as a fellow servant

of train operatives in such sense that the master is not liable to train operatives who are injured by obeying an erroneous order of the dispatcher that was induced by false information given by the local operator. Negligence of a local telegraph operator and station agent of a railway company in observing and reporting by telegraph to the train dispatcher the movement of trains past his station, which causes the injury or death of a fireman of the company without any fault or negligence of the train dispatcher, is not the negligence of a vice principal for which the railway company is liable in damages to the fireman or his personal representatives, but is the negligence of a fellow servant of the fireman the risk of which the latter assumes. *Northern Pacific Railway Co.* v. *Dixon*, 338.

FISHING RIGHTS.

See HAWAIIAN FISHERIES.

FORAKER ACT.

See JURISDICTION, A 5.

FOREIGN STATUTES.

See EVIDENCE, 1;
JURISDICTION, C 1.

FRAUD ORDERS.

See CONSTITUTIONAL LAW, 12;
POSTAL LAWS.

FULL FAITH AND CREDIT.

See CONSTITUTIONAL LAW, 17.

GRAND JURY.

See CRIMINAL LAW, 4;
JURISDICTION, A 5; D 2;
LOCAL LAW (P. R.).

GRANTS.

See HAWAIIAN FISHERIES;
MINING LANDS;
PUBLIC LANDS.

HABEAS CORPUS.

See ALIEN IMMIGRANT LAW;
JURISDICTION, A 2.

HAWAIIAN FISHERIES.

Rights under local laws—Vested rights—Effect of statement in patent as to fishing rights.

A general law may grant titles as well as a special law. The act of Hawaii

of 1846, "of Public and Private Rights of Piscary," together with royal grants previously made, created and confirmed rights in favor of landlords in adjacent fishing grounds within the reef or one mile to seaward which were vested rights within the saving clause in the organic act of the Territory repealing all laws of the Republic of Hawaii conferring exclusive fishing rights. A statement in a patent of an apuhuaa in Hawaii that "a fishing right is also attached to this land in the adjoining sea" and giving the boundaries thereof, passes the fishery right even if the *habendum* refers only to the above granted land. *Damon* v. *Hawaii*, 154.

IMMIGRATION.

See ALIEN IMMIGRANT LAW; CONSTITUTIONAL LAW, 9; CONGRESS, POWERS OF, 1, 3; JURISDICTION, A 4.

IMPAIRMENT OF CONTRACT.

See CONSTITUTIONAL LAW, 3, 4, 5, 6, 10; JURISDICTION, C 6, 8.

INDEMNITY LANDS.

See PUBLIC LANDS.

INDIANS.

Walla Walla tribe—Allotment under act of March 3, 1885—*Actual residence —Effect of subsequent allotment—Parties.*

An Indian woman, head of a family of the Walla Walla tribe, having asked under the act of March 3, 1885, 23 Stat. 340, for an allotment of land on which she resided and had made improvements, was refused on the ground that she was not on the reservation at the time of the passage of the act. She was directed to remove from the land which was allotted to another Indian who knew of her claims and improvements and who did not pay for her improvements or make any himself. Subsequently she was notified to make a selection but was not allowed to select the land formerly occupied but was told by the land officer that her selection of other lands would not prejudice her claim thereto. No patent was issued to her for the lands so selected. In an action brought by her against the allottee in possession of the lands originally selected by her, *held*, that it was not necessary under the act of March 3, 1885, that the individual members of the tribes mentioned in the act should be actually residing on the reservation at the time of the passage of the act, and that as her selection was prior to that of anyone else, she was entitled to the allotment originally selected and that her right thereto had not been lost by the selection of other lands. *Held*, that in a contest between two Indians, each claiming the same land, the United States having no interest in the result is not a necessary party. *Hy-Yu-Tse-Mil-Kin* v. *Smith*, 401.

See CONSTITUTIONAL LAW, 1.

INDIAN TERRITORY.

See STARE DECISIS.

INDICTMENT.

See CRIMINAL LAW, 1, 3, 4;
CONSTITUTIONAL LAW, 18;
LOCAL LAW (P. R.).

INJUNCTION.

Publishers not entitled to injunction against Postmaster General to prevent re-classification of publications.

The fact that publishers may have made contracts for the future delivery of their publications at prices founded on confidence in the continuance of the certificate of admission to the mails at second-class rates, issued under a former administration of the Post-Office Department, does not entitle them to an injunction restraining the present administration from ascertaining the true character of the publication and charging the legal rate accordingly. *Houghton* v. *Payne*, 88.

See ANTI-TRUST ACT;
EQUITY;
JURISDICTION, B 1; C. 9.

INSTRUCTIONS TO JURY.

1. *Addition of words extending question of negligence, not error.*

Plaintiff is entitled to a verdict if the injury is caused by any of defendant's employés and it is not error for the court to insert "for other employés" in a requested instruction to the jury that they must find for defendant in absence of negligence on the part of the particular employés against whom the evidence was principally directed. *City & Suburban Railway* v. *Svedborg*, 201.

2. *Affecting rights of railroads under act relating to automatic couplers.*

In instructing the jury that railroads are required to keep their appliances in good and suitable order, no right arising under the act of March 2, 1893, in respect of automatic couplers was denied nor was any such specially set up or claimed within § 709, Rev. Stat. *Southern Railway Co.* v. *Carson*, 136.

INTERSTATE COMMERCE.

Direct interference by State—Sherman Act of July 2, 1890, not applicable to contract having remote bearing on.

Only such acts as directly interfere with the freedom of interstate commerce are prohibited to the States by the Constitution, and the Sherman Act of July 2, 1890, is not intended to affect contracts which have only a remote and indirect bearing on commerce between the States. The specification in an ordinance, not invalid under the laws of the State, that a particular kind of asphalt produced only in a foreign country does not violate any Federal right. *Field* v. *Barber Asphalt Paving Co.*, 618.

See ANTI-TRUST ACT;
CONSTITUTIONAL LAW, 21.

INTERSTATE COMMERCE COMMISSION.

Investigation as to reasonableness of coal rates—Production of evidence compellable through Circuit Court.

Where a company owned by a railroad purchases coal at the mines or breakers under a contract fixing the price to the vendor on the basis of a percentage of the average price received at tidewater in another State, it being claimed that this transaction was the means whereby the railroad gave preferential rates to the companies selling the coal, the Interstate Commerce Commission may, in a proceeding properly instituted, inquire into the manner in which the business is done, and compel, through the Circuit Court, the testimony of witnesses and the production of the contracts relating thereto. Where coal companies who had organized a competing line to tidewater made contracts with railroad companies for the purchase of the collieries by the railroad companies, which resulted in the abandonment of the proposed competing line, the contracts are relevant evidence bearing upon the manner in which rates were fixed, and their production before the Commission in an investigation, properly commenced, as to the reasonableness of coal rates, and should be ordered by the Circuit Court. Compelling the giving of such testimony and the production of such contracts does not deprive the witnesses of any rights under the Fourth and Fifth Amendments to the Constitution of the United States. *Interstate Commerce Commission* v. *Baird*, 25.

See STATUTES, A 8.

INTOXICATING LIQUORS.

See CONSTITUTIONAL LAW, 16.

JUDGMENTS AND DECREES.

See JURISDICTION, C 5.

JURISDICTION.

A. OF THIS COURT.

1. *Appeals from Court of Appeals of District of Columbia—"Matter in dispute" defined—Wrong not shown to be actionable not susceptible of pecuniary estimate.*

The "matter in dispute," as respects a money demand, as employed in the statutes regulating appeals from the courts of the District of Columbia, has relation to justiciable demands and must be money or some right, the value of which can be ascertained in money, and which appears by the record to be of the requisite pecuniary value. Where the averments in a petition that a mandamus be issued directing the Secretary of State to assert for the petitioner a claim against a foreign government do not state a cause of action under the principles of law of false imprisonment in this country, and do not show that the alleged wrong was actionable in such foreign country, the right to have the claim asserted is purely conjectural, and not susceptible of pecuniary

estimate, and cannot be said to have the value necessary to give this court jurisdiction, and the writ must be dismissed. *Holzendorf* v. *Hay*, 373.

2. *Direct appeal from Circuit Court where construction of treaty, and acts of Congress bearing on, involved.*

Where the petition for a writ of *habeas corpus*, and the warrant under which the accused is arrested both refer to a treaty and the determination of the court below depends at least in part on the meaning of certain provisions of that treaty, the construction of the treaty is drawn in question, and this court has jurisdiction of a direct appeal from the Circuit Court, even though it is also necessary to construe the acts of Congress passed to carry the treaty provisions into effect. *Pettit* v. *Walshe*, 205.

3. *Direct appeal from Circuit Court where diverse citizenship and also constitutional question involved.*

Where there are allegations of diverse citizenship in the bill, but the jurisdiction of the Circuit Court is also invoked on constitutional grounds the case is appealable directly to the court under § 5 of the act of March 3, 1891, as one involving the construction or application of the Constitution of the United States, and where both parties have appealed the entire case comes to this court, and the respondent's appeal does not have to go to the Circuit Court of Appeals. *Field* v. *Barber Asphalt Paving Co.*, 618.

4. *Review on facts—Effect of finding by board of inquiry and Secretary of Commerce and Labor as to exclusion of anarchist immigrant.*

A board of inquiry and the Secretary of Commerce and Labor having found that an alien immigrant was an anarchist within the meaning of the Alien Immigration Act of March 3, 1903, and there being evidence on which to base this conclusion, his exclusion, or his deportation after having unlawfully entered the country, within the period prescribed pursuant to the provisions of the act, will not be reviewed on the facts. *Turner* v. *Williams*, 279.

5. *Review of judgment of District Court for Porto Rico—Denial of right claimed under Foraker act.*

Where the accused contends in the District Court of the United States for the District of Porto Rico, that under the provisions of the Foraker act of April 12, 1900, 31 Stat. 77, the qualifications of the grand jurors by whom he was indicted should have been controlled by the local law of January 31, 1901, and the court decides adversely, a right is claimed under a statute of the United States and denied; and under § 35 of the Foraker act this court has jurisdiction on writ of error to review the judgment. *Crowley* v. *United States*, 461.

6. *Review of state court's decision on questions of fact.*

This court has no jurisdiction in an action at law to review the conclusions of the highest court of a State upon questions of fact. *Clipper Mining Co.* v. *Eli Mining & Land Co.*, 220.

7. *To review judgment of District Court for Porto Rico.*
Under § 35 of the act of April 12, 1900, this court can review on writ of error a final judgment of the District Court of the United States for Porto Rico, where the amount in dispute exceeds $5,000, and a final judgment in a like case in the Supreme Court of one of the Territories of the United States could be reviewed by this court. *Hijo* v. *United States*, 315.

8. *Where state court subordinates Federal question essential to result sustained.*
Where the state court has sustained a result which cannot be reached except on what this court deems a wrong construction of the charter without relying on unconstitutional legislation this court cannot decline jurisdiction on writ of error because the state court apparently relied more on the untenable construction than on the unconstitutional statute. *Terre Haute &c. R. R. Co.* v. *Indiana*, 579.

See COURTS, 2.

B. OF CIRCUIT COURTS OF APPEALS.

1. *Review, on writ of error, of judgment of District or Circuit Court in contempt proceedings.*
Under § 6 of the Court of Appeals Act of 1891, a Circuit Court of Appeals has jurisdiction to review a judgment of the District or Circuit Court finding a person guilty of contempt for violation of its order and imposing a fine for the contempt. If the person adjudged in contempt and fined therefor is not a party to the suit in which the order is made he can bring the matter to the Circuit Court of Appeals by writ of error but not by appeal. *Bessette* v. *W. B. Conkey Co.*, 324.
When an order imposing a fine for violation of an injunction is substantially one to reimburse the party injured by the disobedience, although called one in a contempt proceeding, it is to be regarded as merely an interlocutory order, and to be reviewed only on appeal from the final decree. Where, however, the fine is payable to the United States and is clearly punitive and in vindication of the authority of the court, it dominates the proceeding and is reviewable by the Circuit Court of Appeals on writ of error, *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324, and that court should take jurisdiction and in case of its refusal mandamus will issue from this court directing it so to do. *Matter of Christensen Engineering Co.*, 458.

2. *Over District Courts of Territory in bankruptcy cases.*
The Circuit Court of Appeals for the Eighth Circuit has jurisdiction to superintend and revise, in matter of law, proceedings of the District Courts of the Territory of Oklahoma in bankruptcy. *Plymouth Cordage Co.* v. *Smith*, 311.

C. OF CIRCUIT COURTS.

1. *Common law action in Circuit Court not maintainable where right of recovery incapable of enforcement.*
A common law action cannot be maintained in a Circuit Court of the United

States against a foreign railroad corporation for the wrongful killing in a foreign country of one upon whom the plaintiffs were dependent where the right of recovery given by the foreign country is so dissimilar to that given by the law of the State in which the action is brought as to be incapable of enforcement in such State. Damages in the nature of alimony and pensions during necessity or until marriage given by the Mexican law to the wife and children of one wrongfully killed in Mexico by a railroad company cannot be commuted into a lump sum by a jury in a common law action brought in a Circuit Court of the United States. *Slater* v. *Mexican National R. R. Co.*, 120.

2. *Consent of parties not sufficient to confer.*

Consent of parties can never confer jurisdiction upon a Federal court. If the record does not affirmatively show jurisdiction in the Circuit Court, this court must, upon its own motion, so declare, and make such order as will prevent the Circuit Court from exercising an authority not conferred upon it by statute. *Minnesota* v. *Northern Securities Co.*, 48.

3. *Diverse citizenship not existent where some members of co-partnership defendant are citizens of complainant's State—Ancillary action where no privity of contract.*

Diverse citizenship does not exist, giving a Circuit Court of the United States jurisdiction of an action affecting the disposition of a fund held by a co-partnership doing business in a State other than that of complainant, if any of the partners are citizens of complainant's State; nor can the jurisdiction of such an action be maintained, either for the purpose of enforcing additional security or to stay waste, as ancillary to a foreclosure suit pending in another Circuit Court of the United States, where there is no privity of contract or trust relations between complainant and defendants, and the record does not show that the defendant in the foreclosure suit could not respond to any judgment that might be recovered therein. *Raphael* v. *Trask*, 272.

4. *Effect of subsequent change in conditions.*

The general rule is that when the jurisdiction of a Circuit Court of the United States has once attached it will not be ousted by subsequent change in the conditions. *Kirby* v. *American Soda Fountain Co.*, 141.

5. *Amount in controversy.*

A Circuit Court may proceed to judgment on a cross bill where defendant's pecuniary claim is less than $2,000, if the jurisdictional amount in dispute appears from bill, answer and cross bill which relate to the same transaction, notwithstanding the original bill has been voluntarily dismissed. *Ib.*

6. *Established when—Attempted impairment of contract with State—Question dependent upon allegations of bill.*

The jurisdiction of the Circuit Court is established when it is shown that

complainant had, or claimed to have a contract with a State or municipality which the latter had attempted to impair, and so long as the claim is apparently made in good faith and is not frivolous, the case can be heard and decided on the merits. Whether presented on motion to dismiss or on demurrer the question of jurisdiction depends primarily on the allegations of the bill and not upon the facts as they may subsequently turn out. *Pacific Electric Ry. Co.* v. *Los Angeles*, 112.

7. *Of action in ejectment—Reliance on defence to establish.*

Where, in an ejectment action, the plaintiffs' statement of their right to the possession of the land discloses no case within the jurisdiction of the Circuit Court of the United States, that jurisdiction cannot be established by allegations as to the defence which the defendant may make or the circumstances under which he took possession. *Filhiol* v. *Torney*, 356.

8. *Of suit involving impairment of contract resulting from municipal ordinance.*

Where the complainant does not base the contract alleged to have been impaired upon the original ordinance granting the franchise which reserved the power of altering fares but asserts that the contracts impaired resulted from subsequent ordinances which deprived the municipality of exercising the rights reserved in the original ordinance, the Circuit Court has jurisdiction of the suit as one arising under the Constitution of the United States. The passage by the municipality of an ordinance affecting franchises already granted in prior ordinances amounts to an assertion that the legislative authority vested in it to pass the original ordinance gave it the continued power to pass subsequent ordinances and it cannot assail the jurisdiction of the Circuit Court on the ground that its action in impairing the contracts which resulted from prior ordinances was not an action by authority of the State. *Cleveland* v. *Cleveland Railway Companies*, 517, 538.

9. *Power to enjoin use of machines, infringing patents, by employes in service of United States.*

Complainant as the owner of letters patent for a concelling and postmarking machine brought suit against a postmaster to restrain him from using infringing machines which were in his post office used exclusively by his subordinates, employés of the United States, such use being in the service of the United States, the machines having been hired by the Post Office Department for a term not yet expired from the manufacturer at an agreed rental payable on the order of the Department by whose order they were placed and used in the post office. *Held*, that the suit was virtually one against the United States and the Circuit Court of the United States has not the power to grant an injunction against the defendant restraining the use of the machines pending the leased periods. (*Belknap* v. *Schild*, 161 U. S. 10, followed.) *International Postal Supply Co.* v. *Bruce*, 601.

10. *Power to make order for examination of party before trial.*

A Circuit Court of the United States in the State of New York is not authorized to make an order for the examination of a party before trial before a master or commissioner appointed pursuant to §§ 870 *et seq.*, of the Code of Civil Procedure of New York. *Hanks Dental Assn.* v. *Tooth Crown Co.*, 303.

See REMOVAL OF CAUSES, 1.

D. OF DISTRICT COURTS.

1. *Porto Rico—Action against United States within cognizance of District Court.*

An action which could be brought under the Tucker Act against the United States in either a District or a Circuit Court of the United States is within the cognizance of the District Court of the United States of Porto Rico. *Quære*, and not decided, whether a foreign corporation can maintain any action under the Tucker Act in any court in view of the provisions of the act that the petition must be filed in the District where the plaintiff resides. *Hijo* v. *United States*, 315.

2. *Porto Rico—Jurisdiction that of United States Circuit Courts—Control of local law in criminal prosecutions.*

Under §§ 14 and 34 of the Foraker act, providing that the District Court of the United States for the District of Porto Rico shall have jurisdiction in all cases cognizant in the Circuit Courts of the United States and shall proceed therein in the same manner as a Circuit Court, the provisions of § 800, Rev. Stat., apply to criminal prosecutions, and the court must recognize any valid existing local statute as to the qualification of jurors in the same manner as a Circuit Court of the United States is controlled in criminal prosecutions by the applicable statute of the State in which it is sitting. *Crowley* v. *United States*, 461.

E. OF FEDERAL COURTS GENERALLY.

See CONSTITUTIONAL LAW, 19, 23;
JURISDICTION, C 2;
REMOVAL OF CAUSES, 1.

F. EQUITY.

See EQUITY.

JURORS.

See PRACTICE, 1.

JURY.

See COURT AND JURY; JURISDICTION, A 5; C 1; D 2;
INSTRUCTIONS TO JURY; LOCAL LAW (P. R.).

LAND DEPARTMENT.

See MINING CLAIMS, 3

LAND GRANTS.

See HAWAIIAN FISHERIES; PUBLIC LANDS; MINING CLAIMS; STATUTES, A 10.

LEASE.

See NATIONAL BANKS.

LICENSE.

See CONGRESS, POWERS OF, 3; CONSTITUTIONAL LAW, 24.

LIMITATIONS.

See LOCAL LAW (MONT.).

LIQUORS.

See CONSTITUTIONAL LAW, 16.

LOCAL LAW.

Alaska. Penal Code, Title II, sec. 460 (see Constitutional Law, 24). *Binns* v. *United States*, 486.

California. Street Railway Franchise, Act of March 11, 1901 (see Constitutional Law, 3). *Pacific Electric Railway Co.* v. *Los Angeles*, 112.

Cleveland. Ordinance of October 17, 1898, and consolidated ordinances of February, 1885, relative to street railways (see Constitutional Law, 6). *Cleveland* v. *Cleveland Railway Companies*, 517, 538.

Hawaii. Rights of Piscary, Act of 1846 (see Hawaiian Fisheries). *Damon* v. *Hawaii*, 154.

Michigan. Tax sales (see Courts, 1). *Chandler* v. *Dix*, 590.

Missouri. Improvements, sec. 5989, Rev. Stat. (see Constitutional Law, 14). *Field* v. *Barber Asphalt Paving Co.*, 618.

Montana. Sec. 554, Code of Civil Procedure—Limitation of actions. Section 554 of the Montana Code of Civil Procedure, limiting actions to enforce a special statutory director's liability to three years, applies to liabilities incurred before its passage under a different statute and goes with them as a qualification when they are sued upon in other States. If such a statute of limitations allows over a year in which to sue upon an existing cause of action it is sufficient. A statute of limitations may bar an existing right as well as the remedy. *Davis* v. *Mills*, 451.

New York. Conditional sales, sec. 112, ch. 418, Laws of New York (see Bankruptcy). *Hewit* v. *Berlin Machine Works*, 296. Depositions, sec. 870 *et seq.* Code of Civil Procedure (see Jurisdiction, C 10). *Hanks Dental Assn.* v. *Tooth Crown Co.*, 303.

Ohio. Beal Local Option Law (see Constitutional Law, 16). *Lloyd* v. *Dollison*, 445.

Porto Rico. Grand jurors; disqualification of; effect upon indictment—Pleading. After April 1, 1901, there was a local statute in Porto Rico, regulating the qualifications of jurors and the presence of persons

on the grand jury of the District Court of the United States for the District of Porto Rico disqualified under that act and who were summoned to serve after the act took effect, vitiates the indictment when the facts are seasonably brought to the attention of the court. An objection by plea in abatement, and before arraignment of the accused, to an indictment on the ground that some of the grand jurors were disqualified by law, was in due time and was made in a proper way. *Quære* and not decided whether the presence of jurors disqualified by the act, but summoned before it took effect, would affect an indictment found after the act took effect. *Crowley* v. *United States*, 461.

See JURISDICTION, A 5; D 2.

Texas. Johnson Grass Act, Law of 1901, ch. 117 (see Constitutional Law, 13). *Missouri, Kansas & Texas Ry. Co.* v. *May*, 267.

LOCAL OPTION.

See CONSTITUTIONAL LAW, 16.

LOTTERY.

See CONSTITUTIONAL LAW, 12.

MAILS.

See CONGRESS, POWERS OF, 2; CONSTITUTIONAL LAW, 12, 20; INJUNCTION; POSTAL LAWS.

MANDAMUS.

See JURISDICTION, B 1.

MARITIME LAW.

See ADMIRALTY.

MERGER.

See CORPORATIONS.

MINING CLAIMS.

1. *Lode claim—Patent embraces what.*

The patent for a lode claim takes the sub-surface as well as the surface, and there is no other right to disturb the sub-surface than that given by § 2322, Rev. Stat., to the owner of a vein apexing without its surface but descending on its dip into the sub-surface to pursue and develop that vein. *St. Louis Mining &c. Co.* v. *Montana &c. Co.*, 235.

2. *Placer claims—Patent embraces what.*

Although a placer location is not a location of lodes and veins beneath the surface, but simply a claim of a tract of ground for the sake of loose deposits upon or near the surface, and the patent to a placer claim does not convey the title to a known vein or lode within its area unless

specifically applied and paid for, the patentee takes title to any lode or vein not known to exist at the time of the patent and subsequently discovered. The owner of a valid mining location, whether lode or placer, has the right to the exclusive possession and enjoyment of all the surface included within the lines of the location. One going upon a valid placer location to prospect for unknown lodes and veins against the will of the placer owner, is a trespasser and cannot initiate a right maintainable in an action at law to lode and vein claims within the placer limits which he may discover during such trespass. The owner of a placer location may maintain an adverse action against an applicant for a patent of a lode claim, when the latter's application includes part of the placer grounds. *Quære*, and not decided, what the powers of a court of equity may be as to conflicting placer lode locations. *Clipper Mining Co.* v. *Eli Mining & Land Co.*, 220.

3. *Power of land department to cancel mining location—Effect of rejection of application for patent.*

The land department has the power to set aside a mining location and restore the ground to the public domain, but a mere rejection of an application for a patent does not have that effect. A second or amended application may be made and further testimony offered to show the applicant's right to a patent. *Ib.*

4. *Notice to coöwner to contribute to development, effect of—Sufficiency of notice in case of deceased coöwner—Sufficiency of publication.*

A notice to a coöwner, to contribute his share of development work on a mining claim, when rightfully published under § 2324 is effective in cutting off the claims of all parties and the title is thus kept clear and free from uncertainty and doubt. Claims for more than one year may be grouped in one notice. It is not necessary for the notice to delinquent coöwners required by §2324, Rev. Stat., to specifically name the heirs of a deceased coöwner, but is sufficient if addressed to such coöwner, "his heirs, administrators and to whom it may concern," even though an administrator had not been appointed at the time. A notice published every day except Sundays, commencing Monday, January 7, and ending Monday, April 1, held to have been published once a week for ninety days and to be sufficient under § 2324, Rev. Stat. *Elder* v. *Horseshoe Mining & Milling Co.*, 248.

MORTGAGE.

See CONSTITUTIONAL LAW, 5.

MUNICIPAL CORPORATIONS.

See CONSTITUTIONAL LAW, 15;
PUBLIC WORKS.

MUNICIPAL ORDINANCES.

See CONSTITUTIONAL LAW, 6, 15;
EQUITY;
JURISDICTION, C 8.

NATIONAL BANKS.

Ultra vires—Conveyance of bank building in satisfaction of liability under lease, not invalid.

A national bank erected a building on leased property, the lease securing the landlord by a lien on the building and the personal obligation of bank. While a large amount of rent and taxes were unpaid the bank became insolvent, the property was not paying fixed charges; after notice to, and no objections by, the stockholders, and no creditors intervening, the bank conveyed the property, with the building back to the landlord in consideration of his releasing the bank and the stockholders from all liabilities accrued and to accrue under the lease. *Held* that the proceeding was not *ultra vires*, and that as the judgment of the stockholders and officers had been prudently exercised in good faith the landlord acquired title to the land and building and was not liable to account for the value of the building in an action brought by a creditor who had knowledge of, and had not protested against, the conveyance when made. *Brown* v. *Schleier*, 18.

NAVY PERSONNEL ACT.

Pay of retired officers.

Under § 1444, Rev. Stat., and § 11 of the Navy Personnel Act of March 3, 1899, a captain in the navy who is retired as a rear admiral receives three-fourths of the pay of rear admirals in the nine lower numbers of the eighteen rear admirals provided for by the act and not three-fourths of the pay of those in the nine higher numbers. While repeals by implication are not favored where the same subject matter is covered by two acts which cannot be harmonized with a view to giving effect to the provisions of each, the latter act prevails, to the extent of the repugnancy between them when it is apparent that the latter act was intended as a substitute for the earlier one (*District of Columbia* v. *Hutton*, 143 U. S. 18). Provisions as to allowances which are fixed for naval officers in the Navy Personnel Act of March 3, 1899, supersede the statutory provisions as to the same allowances in the earlier statutes. *Gibson* v. *United States*, 182.

NEGLIGENCE.

Relation to circumstances—Failure of common carrier to take precautions against fire.

Negligence has always relation to the circumstances in which one is placed, and what an ordinarily prudent man would do or omit in such circumstances. The failure to keep a watchman and fire apparatus at a switch track plantation station, maintained for ten years for the convenience of shippers, who thereby were saved the expense of sending their cotton two and a half miles to a regular station and who never demanded the additional protection, no accident or fire occurring during such period, is not negligence on the part of the carrier and in the absence of any evidence whatever as to the origin of the fire, justi-

fies the direction of a verdict for defendant. *Charnock* v. *Texas & Pacific Ry. Co.*, 432.

See COMMON CARRIER;
FELLOW SERVANTS;
INSTRUCTIONS TO JURY, 1.

NOTICE.

See MINING CLAIMS, 4.

PARTIES.

An action to enjoin the enforcement of tax liens cannot be maintained against a state official who has retired from office. *Chandler* v. *Dix*, 590.

See ANTI-TRUST ACT;
CONSTITUTIONAL LAW, 19;
INDIANS.

PATENT FOR INVENTION.

See JURISDICTION, C 9.

PATENT FOR LAND.

See HAWAIIAN FISHERIES; PUBLIC LANDS;
MINING CLAIMS; STATUTES, A 10.

PERIODICAL PUBLICATIONS.

See INJUNCTION;
POSTAL LAWS.

PISCARY.

See HAWAIIAN FISHERIES.

PLACER CLAIMS.

See MINING CLAIMS, 2.

PLEADING.

Sufficiency of averment of citizenship of defendant corporation—Defective averment cured by allegations in record.

An allegation in the complaint, which is admitted by the answer that defendant is a domestic corporation duly organized and existing under the laws of a designated State and having its principal office therein is a sufficient averment as to defendant's citizenship. In determining, on certified question of jurisdiction from the Circuit Court of Appeals, whether diverse citizenship exists, the whole record may be looked to for the purpose of curing a defective averment, and if the requisite citizenship is anywhere averred in the record, or facts are therein stated which in legal intendment constitute such allegation, that is sufficient. Where the court is satisfied, in the light of all the testimony, that an

averment of residence in a designated *State* was intended to mean, and, reasonably construed must be interpreted as averring, that plaintiff was a *citizen* of that State, it is sufficient. *Sun Printing & Publishing Assn.* v. *Edwards*, 377.

See CONSTITUTIONAL LAW, 4; COURTS, 2; JURISDICTION, C 5, 6; LOCAL LAW (P. R.); MINING CLAIMS, 3; REMOVAL OF CAUSES.

POLICE POWER.

See CONSTITUTIONAL LAW, 15, 16.

PORTO RICO.

See JURISDICTION, A 5, 7; D 2; LOCAL LAW.

POSTAL FRAUD ORDERS.

See CONSTITUTIONAL LAW, 12; POSTAL LAWS.

POSTAL LAWS.

Periodical publications defined—Power of Postmaster General to exclude publications from second class mail—Construction of act of March 3, 1879.

Periodical publications as defined in the Post Office bill of March 3, 1879, do not include books complete in themselves and which have no connection with each other, simply because they are serially issued at stated intervals more than four times a year, bound in paper, bear dates of issue and numbered consecutively; and the Postmaster General can exclude them from second class mail notwithstanding they have been heretofore transmitted as such by his predecessors in office. The terms "periodical" and "periodical publication," as used in the act of March 3, 1879, are used in their obvious and natural sense, and denote the well-recognized and generally understood class of publications commonly called by the name of "periodical." The provisions of § 14, act of March 3, 1879, are not descriptive of the kind of publication which is to be admitted to the class of periodical publications provided for by §§ 7 and 10 of said act, but are express limitations added to the description in those sections. The provisions of § 14 are not to be taken to determine what is a periodical publication, but to ascertain whether, being such a publication as is contemplated by § 10, it also answers the additional conditions there imposed. *Houghton* v. *Payne*, 88; *Smith* v. *Payne*, 104.

See CONGRESS, POWERS OF, 2; CONSTITUTIONAL LAW, 20; INJUNCTION.

POWERS OF CONGRESS.

See CONGRESS, POWERS OF; CONSTITUTIONAL LAW, 20, 24.

PRACTICE.

1. *Anticipation of judgment of state court—Necessity for injury before complaint.*

This court will not anticipate the judgment of the state court by deciding what persons are qualified to act as jurors before the trial and one who is to be tried cannot complain until he is made to suffer. *Lloyd* v. *Dollison*, 445.

2. *Moot case—Dismissal of writ where thing sought to be prohibited cannot be undone.*

Where the case is one in prohibition, and it appears by conclusive evidence *aliunde* that since judgment by dismissal in the lower court the thing sought to be prohibited has been done and cannot be undone by any order of court, there is nothing remaining but a moot case and the writ of error will be dismissed. (*Mills* v. *Green*, 159 U. S. 654). *Jones* v. *Montague*, 147.

3. *Necessity for showing injury by statute sought to be declared unconstitutional.*

A party insisting upon the invalidity of a statute as violating any constitutional provision must show that he may be injured by the unconstitutional law before the courts will listen to his complaint. *Hooker* v. *Burr*, 415.

See ADMIRALTY;
COURTS, 2;
FEDERAL QUESTION;
JURISDICTION, C 2;
PLEADING;
STATUTES, A 13;
WRIT AND PROCESS.

PREFERENTIAL RATES.

See INTERSTATE COMMERCE COMMISSION.

PRESUMPTION.

See CONTRACTS;
EXECUTIVE OFFICERS.

PROBABLE CAUSE.

See CRIMINAL LAW, 1.

PROCESS.

See EXTRADITION;
WRIT AND PROCESS.

PROHIBITION.

See PRACTICE, 2;

PROVISOS.

See STATUTES, A 7.

PUBLICATION.

See MINING CLAIMS, 4.

PUBLICATIONS.

See INJUNCTION;
POSTAL LAWS.

PUBLIC LANDS.

Indemnity lands—Title by relation—Right of successor in interest to applicant to receive from United States damages collected from trespassers.

By the fiction of relation, where the interest of justice demands it, the legal title may be held to relate back to the initiatory step for the acquisition of the land. Where the selection of indemnity lands is made in accordance with the statute and the selection rejected, and action on the appeal is delayed, but the appeal is finally decided in favor of the selections, the case is one peculiarly within the principle of relation, as the approval of the selection manifestly imports that at the time of the selection the land was rightfully claimed by the applicant. The successor in interest to the applicant who would have been entitled to recover against trespassers for materials removed from the land after the application and before the patent issued, may, under the doctrine of relation, be regarded as the owner from the date of the application, and is entitled to receive from the United States the amount collected by it from trespassers who removed materials from the land after such date, the United States having had notice of the claim prior to such collection. *United States* v. *Anderson*, 394.

See MINING CLAIMS, 2 3;
INDIANS;
STATUTES, A 10.

PUBLIC OFFICERS.

See PARTIES.

PUBLIC WORKS.

Effect of contractor's activity in stimulating demand for improvement—Municipal authorities exclusive judges of necessity for improvements.

Although the agent of the company obtaining a paving contract may have been active and influential in obtaining signatures to the petition for the improvements, in the absence of proof of fraud and corruption the levies will not be set aside after the improvement has been completed. The necessity for an improvement of streets is a matter of which the proper municipal authorities are the exclusive judges and their judgment is not to be interfered with except in cases of fraud or gross abuse of power. *Field* v. *Barber Asphalt Paving Co.*, 618.

See CONSTITUTIONAL LAW, 10.

RAILROADS.

Provision of charter that legislature "may" regulate tolls, held permissive and not mandatory—Effect of failure of State to act.

A provision in a charter of a railroad company that the legislature *may* so regulate tolls that not more than a certain percentage be divided

as profits to the stockholders and the surplus shall be paid over to the state treasurer for the use of schools, *held*, in this case to be permissive and not mandatory and that until the state acted or made a demand the railroad company could act as it saw fit as to its entire earnings. When, therefore, the company surrendered its original charter and accepted a new one without any such provision and there had up to that time been no attempt on the part of the State to regulate tolls or any demand made for surplus earnings the company was free from liability under the original charter and subsequent legislation attempting to amend its charter or the general railroad law would not affect its rights. *Terre Haute &c. R. R. Co.* v. *Indiana*, 579.

See COMMON CARRIER;
CONSTITUTIONAL LAW, 3, 6, 13;
EQUITY;
INSTRUCTIONS TO JURY;
NEGLIGENCE.

RAILWAY LAND GRANTS.

See STATUTES, A 10.

RATES.

See INJUNCTION;
INTERSTATE COMMERCE COMMISSION;
POSTAL LAWS.

RELATION.

See PUBLIC LANDS.

REMEDIES.

Implied waiver of right to complain of illegal assessment.

There are circumstances under which a party who is illegally assessed may be held to have waived his remedy by conduct which renders it unjust and inequitable to others that he should be allowed to complain of the illegality. *Shepard* v. *Barron*, 553.

See JURISDICTION, C 1.

REMOVAL OF CAUSES.

1. *Pleadings must show Federal question—Duty of Federal court to remand where lack of jurisdiction disclosed.*

Under existing statutes regulating the jurisdiction of the courts of the United States, a case cannot be removed from a state court, as one arising under the Constitution or laws of the United States, unless the plaintiff's complaint, bill or declaration shows it to be a case of that character. While an allegation in a complaint filed in a Circuit Court of the United States may confer jurisdiction to determine whether the case is of the class of which the court may properly take cognizance for purposes of a final decree on the merits, if, notwithstanding such allegation, the court finds, at any time, that the case does not really and substantially involve a dispute or controversy within its jurisdiction, then, by the express command of the act of 1875, its duty is to

proceed no further. And if the suit, as disclosed by the complaint could not have been brought by plaintiff originally in the Circuit Court, then, under the act of 1887–1888 it should not have been removed from the state court and should be remanded. *Minnesota* v. *Northern Securities Co.*, 48.

2. *Right not exercised, no defence to action on merits.*

In an action in which no application for removal to the Federal court was made at any time, *held* that if the right existed it furnished no defence to the action on the merits in the state court. *Southern Railway Co.* v. *Carson*, 136.

REMOVAL UNDER INDICTMENT.

See CRIMINAL LAW, 1.

SEAMEN.

See ADMIRALTY.

SEARCHES AND SEIZURES.

See CONSTITUTIONAL LAW, 21.

SENTENCE.

See CRIMINAL LAW, 3.

SHERMAN ACT.

See ANTI-TRUST ACT;
INTERSTATE COMMERCE COMMISSION.

SHIPPING.

See ACTION;
ADMIRALTY.

SPANISH-AMERICAN WAR.

See ACTION.

STARE DECISIS.

Constitutionality of Curtis Act.

The constitutionality of the Curtis Act, 30 Stat. 495, for the protection of the Indian Territory has been settled by this court and is not now open to question (*Stephens* v. *Cherokee Nation*, 174 U. S. 45; *Cherokee Nation* v. *Hitchcock*, 187 U. S. 294). *Morris* v. *Hitchcock*, 384.

STATES.

See ANTI-TRUST ACT; CONSTITUTIONAL LAW, 2, 8, 14, 16, 19, 23; COURTS, 1; FEDERAL QUESTION; INTERSTATE COMMERCE; RAILROADS.

STATUTES.

A. CONSTRUCTION OF.

1. *A general law may grant titles as well as a special law.* *Damon* v. *Hawaii*, 154.

2. *Bankruptcy act—Exemption from taxation of property in hands of trustee.*
Where Congress has the power to exempt property from taxation the intention must be clearly expressed. There is nothing in the Bankruptcy Act of 1898 which exempts property in the hands of a trustee in bankruptcy from the state and municipal taxes to which similar property in the same locality is subject. *Swarts* v. *Hammer*, 441.

3. *Conflict between statute and treaty.*
In case of a conflict between a statute and treaty, the one last in date prevails. *Hijo* v. *United States*, 315.

4. *Contemporaneous construction not an absolute rule of interpretation—Custom must yield to positive language of statute.*
Contemporaneous construction is a rule of interpretation but it is not an absolute one and does not preclude an inquiry by the courts as to the original correctness of such construction. A custom of a department of the Government, however long continued by successive officers, must yield to the positive language of the statute. *Houghton* v. *Payne*, 88.

5. *Debates of Congress as sources of information in construction of statutes—Reports of committees.*
The general rule that debates of Congress are not appropriate sources of information from which to discover the meaning of the language of statutes passed by that body does not apply to the examination of the reports of committees of either branch of Congress with a view of determining the scope of statutes passed on the strength of such reports (*Holy Trinity Church* v. *United States*, 143 U. S. 457, 464). *Binns* v. *United States*, 486.

6. *Interpretation in light of all that may be done under.*
Statutory provisions must be interpreted in the light of all that may be done under them. In all controversies, civil and criminal, between the Government and an individual, the latter is entitled to reasonable protection. *Beavers* v. *Henkel*, 73.

7. *Legislative intent—Provisos in Federal legislation.*
The object of construction is to ascertain the legislative intent, and, if possible, to effectuate the purposes of the lawmakers. Although not in accord with its technical meaning, or its office when properly used, a frequent use of the proviso in Federal legislation is to introduce new matter extending, rather than limiting or explaining, that which has gone before. *Interstate Commerce Commission* v. *Baird*, 25.

8. *Proviso in section 3, act of February 19, 1903—Direct appeal by Interstate Commerce Commission.*
Under the proviso in § 3 of the act of February 19, 1903, a direct appeal may be taken to this court from a judgment of the Circuit Court in a proceeding brought by the Interstate Commerce Commission, under

the direction of the Attorney General, to obtain orders requiring the testimony of witnesses and the production of books and documents. *Ib.*

9. *Provision of charter of railroad that legislature "may" regulate tolls, held permissive and not mandatory.*

A provision in a charter of a railroad company that the legislature *may* so regulate tolls that not more than a certain percentage be divided as profits to the stockholders and that surplus shall be paid over to the state treasurer for the use of schools, *held,* in this case to be permissive and not mandatory and that until the state acted or made a demand the railroad company could act as it saw fit as to its entire earnings. *Terre Haute &c. R. R. Co.* v. *Indiana,* 579.

10. *Railway Land Grants—Act of March* 3, 1887, *section* 4, 24 *Stat.* 556—*Unearned lands—Purchase in good faith within meaning of act.*

Section 4 of the act of March 3, 1887, 24 Stat. 556, for the adjustment of forfeited railroad grants providing for issuing patents under the conditions specified for lands sold by the grantee company to purchasers in good faith, has no reference to any unearned lands purchased after the date of the act from a company to which they had never been certified or patented, although such company might have acquired an interest in them had it completed its road. Nor can one who purchased unearned lands from a grantee company whose grant was made by Congress through the State in which its road was to be built, be regarded as a purchaser in good faith, within the meaning of the act of 1887, when the purchase was made after the passage of the act and after the State had, by legislative enactment, resumed its title to the lands and then relinquished them to the United States on account of the failure to complete its road. *Knepper* v. *Sands,* 476.

11. *Repeals by implication not favored—When latter of two acts prevails—Navy Personnel Act.*

While repeals by implication are not favored where the same subject matter is covered by two acts which cannot be harmonized with a view to giving effect to the provisions of each, the latter act prevails, to the extent of the repugnancy between them when it is apparent that the latter act was intended as a substitute for the earlier one. (*District of Columbia* v. *Hutton,* 143 U. S. 18.) Provisions as to allowances which are fixed for naval officers in the Navy Personnel Act of March 3, 1899, supersede the statutory provisions as to the same allowances in the earlier statutes. *Gibson* v. *United States,* 182.

12. *Supplementary—Relation of act of March* 9, 1892, *to sections* 861 *and* 914, *Rev. Stat.*

The act of March 9, 1892, 27 Stat. 7, in regard to taking testimony, does not repeal or modify § 861, Rev. Stat., or create any additional exceptions to those specified in the subsequent sections by enlarging the causes or grounds for taking depositions, and is not supplementary to § 914, Rev. Stat. *Hanks Dental Assn.* v. *Tooth Crown Co.,* 303.

13. *Words "court" and "judge"—Appeals from United States Commissioners under act of September* 13, 1888.

The words "court" and "judge" have frequently been used interchangeably in Federal statutes, and this court adheres to the construction it has heretofore recognized as correct, and which has been adopted generally in practice, and in Congressional legislation that the appeal from a United States Commissioner provided for in § 13 of the act of September 13, 1888, 25 Stat. 476, 479, is an appeal to the District Court, and should so be regarded. The papers or proceedings below should be filed by the clerk of the District Court as an appeal pending in that court, and the final judgment should be accordingly recorded. *United States, Petitioner*, 194.

See ALIEN IMMIGRANT LAW; ANTI-TRUST ACT; CRIMINAL LAW, 4; FEDERAL QUESTION; INDIANS; INTERSTATE COMMERCE; LOCAL LAW (MONT.); POSTAL LAWS; WITNESS, 2.

B. OF THE UNITED STATES.

See ACTS OF CONGRESS.

C. OF STATES AND TERRITORIES.

See LOCAL LAW.

STREET RAILWAYS.

See CONSTITUTIONAL LAW, 3, 6; EQUITY.

TAXATION.

Exemption of property in hands of trustee in bankruptcy.

Where Congress has the power to exempt property from taxation the intention must be clearly expressed. There is nothing in the Bankruptcy Act of 1898 which exempts property in the hands of a trustee in bankruptcy from the State and municipal taxes to which similar property in the same locality is subject. *Swarts* v. *Hammer*, 441.

See CONGRESS, POWERS OF, 3; CONSTITUTIONAL LAW, 1, 10, 24; ESTOPPEL; RAILROADS; REMEDIES.

TAX SALES.

See CONSTITUTIONAL LAW, 19; COURTS, 1.

TERRITORIAL COURTS.

See JURISDICTION, A 5.

TERRITORIES.

See CONGRESS, POWERS OF, 3; CONSTITUTIONAL LAW, 24; JURISDICTION, A 5, 7; B 2; D 2; LOCAL LAW (P. R.).

TESTIMONY.

See STATUTES, A 12;
WITNESS.

TITLE.

See HAWAIIAN FISHERIES; NATIONAL BANKS;
MINING CLAIMS, 4; PUBLIC LANDS;
STATUTES, A 1.

TREATIES.

See ACTION;
EXTRADITION;
JURISDICTION, A 2.

TRESPASS.

See MINING CLAIMS, 2.

TRIAL.

See CONSTITUTIONAL LAW, 7, 18, 22; FEDERAL QUESTION, 2;
CRIMINAL LAW, 2; INSTRUCTIONS TO JURY.

ULTRA VIRES.

See NATIONAL BANKS.

UNITED STATES COMMISSIONER.

See EXTRADITION, 2.

VERDICT.

See COURT AND JURY;
INSTRUCTIONS TO JURY, 1;
NEGLIGENCE.

VESTED RIGHTS.

See HAWAIIAN FISHERIES.

WAIVER.

See REMEDIES.

WALLA WALLA INDIANS.

See INDIANS.

WAR.

See ACTION.

WATERS.

See HAWAIIAN FISHERIES.

WITNESS.

1. *Effect of voluntary testimony not compellable.*

A witness who voluntarily testifies cannot resist the effect of the testimony by claiming that he could not have been compelled to give it. The time to avail of a statutory protection is when the testimony is offered. *Burrell* v. *Montana*, 572.

2. *Protection, under Bankruptcy Act, of bankrupt as witness before referee.*

The provision in the bankruptcy act of July, 1898, requiring the bankrupt to testify before the referee, but providing that no testimony then given by him shall be offered in evidence against him in any criminal proceeding, does not amount to exemption from prosecution, nor does it deprive the evidence of its probative force after it has been admitted without objection in a criminal prosecution against the bankrupt in a state court. *Ib.*

See CONSTITUTIONAL LAW, 7, 22;
FEDERAL QUESTION.

WORDS AND PHRASES.

See STATUTES, A 13.

WRIT AND PROCESS.

Writ of habeas corpus cannot be made to do office of writ of error.

A writ of *habeas corpus* to release the petitioner from imprisonment cannot be made to do the office of a writ of error and this court will not on such a proceeding review errors of law on the part of the trial court. *Dimmick* v. *Tompkins*, 540.